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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,413	01/22/2004	Ian Peek	2810	4528
7590	07/28/2004		EXAMINER	
STRIKER, STRIKER & STENBY 103 East Neck Road Huntington, NY 11743			LEGESSE, NINI F	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/762,413	PEEK, IAN	
Examiner	Art Unit		
Nini F. Legesse	3711		

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 January 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-10 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/17/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Hesselbart (US Patent No. 5,013,044).**

- **With respect to claim 1**, Hesselbart discloses an upright rack (76); a rod (78) provided on said rack (76) and aligned substantially horizontally and parallel to a desired hitting direction, said rod being arranged at a distance to said rack such that a golf club is swingable through underneath said rod (refer to Fig. 1).
- **With respect to claim 2**, an extension (88) connecting said rod with said rack so as to hold said rod at said distance to said rack.
- **With respect to claim 3**, the rod is disposed substantially at a height of a forearm of a golfer (see Fig. 1).
- **With respect to claim 10**, the rod (78) and said rack (76) are dismountable from one another (as shown on Fig. 2, the wing set screws 94, 96, and 102 provide the capability of dismounting the rod and the rack elements).

**Claims 1-3, 8, and 9** are rejected under 35 U.S.C. 102(b) as being anticipated by Tarulli et al. (US Patent No. 6,343,998).

- **With respect to claim 1**, Tarulli discloses an upright rack (41); a rod provided on said rack and aligned substantially horizontally (57,61) and parallel to a desired hitting direction (see Fig. 2), the rod being arranged at a distance to said rack such that a golf club is swingable through underneath said rod (the structure as shown on Fig. 1 is capable of being used for the function specified in this claim).
- **With respect to claim 2**, an extension (61) connecting said rod with said rack so as to hold said rod at said distance to said rack.
- **With respect to claim 3**, the rod is disposed substantially at a height of a forearm of a golfer (since the device is adjustable, the rod element 61 is capable of being positioned at a height of a forearm of a golfer).
- **With respect to claim 8**, the rack is adjustable in height (column 3, lines 20-24).
- **With respect to claim 9**, the extension is arranged extendably on said rack (see Fig. 1).

**Claims 1, 4, and 5** are rejected under 35 U.S.C. 102(b) as being anticipated by McKinney (US Patent No. Des. 324,554).

- **With respect to claim 1**, McKinney discloses an upright rack (the vertical element as shown on Fig. 1); a rod provided on said rack and aligned substantially horizontally (the horizontal element as shown on Fig. 1) and parallel to a desired hitting direction (see Figs. 1-6), the rod being arranged at a distance

to said rack such that a golf club is swingable through underneath said rod (the structure as shown on Figs. 1-6 is capable of being used for the function specified in this claim).

- **With respect to claims 4 and 5,** the rod as shown on Fig. 1 and the extension that is shown as an elbow on Figs. 5-6 connecting the vertical rack element and the horizontal rod elements is also inflatable.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney in view of Shute (US Patent No. 2,592,347).**

McKinney discloses the invention as recited above but fails to show an air pump wherein said air pump is manually operable. However Shute teaches that the use of a manual pump (7) to inflate elements (see item 5 in Figs. 1-4) is not new. Thus, it would have been obvious to one of ordinary skill in the art to provide a pump in the McKinney device as taught by Shute in order to be able to readily and easily inflate the device for usage.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (703) 605-1233. The examiner can normally be reached on 9:30 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vidovich Greg can be reached on (703) 308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Nini F. Legesse

07/19/04